

FILED
WILLIAMSON COUNTY
2009 JUN 19 PM 10:16

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL and REPORTER,)
)
Plaintiff,)
v.)
)
J K HARRIS & COMPANY, L.L.C., a South)
Carolina limited liability corporation; J K)
HARRIS FINANCIAL RECOVERY)
SYSTEM, L.L.C., a South Carolina limited)
liability corporation; and PROFESSIONAL)
FEE FINANCING ASSOCIATES L.L.C., a)
South Carolina limited liability corporation,)
)
Defendants.)

ENTERED _____

Case No. 34785

STATE OF TENNESSEE'S COMPLAINT
FOR PERMANENT INJUNCTION AND OTHER RELIEF

This civil law enforcement proceeding is brought in the name of the State of Tennessee, in its sovereign capacity, by and through Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter ("Attorney General"), at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Director"). The Attorney General brings this action pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.* ("TCPA"), the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001, *et seq.* ("Credit Services Act"), and pursuant to his general statutory and common law authority. *See*, Tenn. Code Ann. § 8-6-109. The Attorney General and the Director have reason to believe that the above-named Defendants have violated the TCPA and

Credit Services Act. The Attorney General seeks a permanent injunction, restitution, civil penalties and attorneys' fees and costs pursuant to TCPA.

The Defendants have waived ten (10) days notice of the filing of this Complaint as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

Upon information and belief, the State of Tennessee alleges the following:

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provisions of Tenn. Code Ann. § 47-18-108. Venue is proper in Williamson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3), because it is the county where the unfair and deceptive acts and practices alleged in this Complaint took place, or are about to take place, and is the county where Defendants conduct, transact, or have transacted business.

THE PARTIES

2. Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, is charged with enforcing the TCPA, which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. At the request of the Division, the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and the Credit Services Act, and to secure such equitable and other relief as may be appropriate in each case under broad grants of statutory and common law authority. See Tenn. Code Ann. § 8-6-109 and § 47-18-108(a)(1).

3. Defendant J K Harris and Company, L.L.C. (JKHC) is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. Its principal address is 4995 Lacross Road, Charleston, South Carolina 29406. Prior to 2007,

JKHC was also a foreign limited liability company registered with the Tennessee Secretary of State with its registered agent listed as C T Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710. In 2007, JKHC's became an inactive foreign limited liability company with the Tennessee Secretary of State. JKHC is in the business of advertising its services to file offers in compromise (OIC) with the Internal Revenue Service (IRS) on behalf of consumers who are behind on paying their taxes, and collecting a fee from Tennessee consumers prior to the services being completed.

4. Defendant J K Harris Financial Recovery System, L.L.C. (FRS) is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. Prior to 2005, FRS was also a foreign limited liability company registered with the Tennessee Secretary of State with its registered agent listed as C T Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710. In 2005, FRS became an inactive foreign limited liability company with the Tennessee Secretary of State. FRS was in the business of offering debt resolution services to consumers in Tennessee and collecting fees for services prior to rendering them.

5. Defendant Professional Fee Financing Associates, L.L.C. (PFFA) is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. PFFA has not been registered with the Tennessee Secretary of State as a foreign limited liability company. PFFA extends credit to consumers in Tennessee by financing the contracts Tennessee consumers enter into with JKHC and FRS.

6. As used in this Complaint, Defendants shall collectively refer to JKHC, FRS and PFFA.

Upon information and belief, the Attorney General alleges as follows:

FACTUAL ALLEGATIONS

7. Since 1999, the State has received over thirty (30) complaints from Tennessee consumers concerning the practices of JKHC.

8. JKHC operates a website located at www.jkharris.com.

9. JKHC's website promotes Tennessee offices in: Brentwood, Chattanooga, Jackson, Johnson City, Knoxville, and Memphis.

10. According to the consumer complaints, Defendants and John Harris advertised widely that JKHC could assist consumers who owe money to the IRS and state revenue offices by filing for an OIC so that consumers may repay the IRS and state revenue offices for "pennies on the dollar," but that was not true in the majority of cases. A representative advertisement is attached as Exhibit A.

11. Defendants and John Harris advertised JKHC had more than 450 offices nationwide. This advertisement led consumers to believe that the JKHC representative at the office near the consumer's home would be the one who would be handling the consumer's matter for JKHC when that was not the case.

12. Instead, the Defendants' offices were only sales offices which were not open during regular business hours unless a sales agent was present to meet with prospective clients. The person handling the consumer's OIC was actually located at the JKHC home office in Charleston, South Carolina. Once the consumer met with the sales agent, the consumer was not able to meet in person with the person handling his or her case unless the consumer traveled to Charleston, South Carolina.

13. Defendants' advertising also led consumers to believe that the work on their files would be handled by "tax experts," "tax professionals," and "ex-IRS agents," but the work of preparing the OIC offers was not performed by these trained "experts." Instead, the work was handled by employees without the advertised expertise.

14. Consumers complained that JKHC did not provide the services it advertised. Consumer complaints indicated that the consumers would have a case manager assigned to their "cases," but the case managers changed frequently, and the consumers were generally asked to provide the same documentation on several different occasions because the new case manager could not locate the requested information in the file.

15. Consumers also complained that in cases where the case manager actually filed an OIC for a consumer, the information was out of date, and the IRS would request updated information, further delaying the consumer's attempt to receive approval on the proposed OIC.

16. Consumers further complained that when they tried to reach their case manager to discuss their cases, they were unable to speak with the case manager or to get an accurate report of the status of their cases.

17. According to IRS statistics, the percentage of consumers who are actually approved for an OIC is very small and Defendants repeatedly took money from consumers without fully investigating whether the consumer would qualify for an OIC or while knowing that the consumer would not qualify for an OIC.

18. Defendants did not always perform the work promised by their contract and, in many cases, failed to ever apply for the OIC for the consumers, yet refused to return the money the consumers had paid for its services.

19. Defendant FRS sent deceptive mailings to consumers of Tennessee informing the consumers that someone had filed a judgment against him or her in a Tennessee court when there was no debt which would affect the consumer's credit.

20. Defendant FRS deceptively offered to help the consumer negotiate the debt and repair his or her credit when there was no debt which would affect the consumer's credit.

21. Defendant PFFA financed consumer contracts for consumers who entered into installment contracts with JKHC for the preparation and filing of an OIC and to FRS for services of negotiating a debt and credit repair. When these services were not provided as promised, PFFA would not release the consumer from the debt.

VIOLATIONS OF THE LAW

COUNT I: TENNESSEE CONSUMER PROTECTION ACT VIOLATIONS

22. Plaintiff hereby incorporates by reference and re-alleges each and every allegation contained in paragraphs 1 through 21.

23. By engaging in the aforesaid conduct, Defendants have engaged in trade or commerce in the State of Tennessee.

24. By engaging in the aforesaid conduct, Defendants have violated the TCPA by committing acts and practices that are unfair, misleading, or deceptive, in violation of Tenn. Code Ann. § 47-18-104(a).

25. By engaging in the aforesaid conduct, Defendants have violated the TCPA by committing acts and practices that are *per se* deceptive, in violation of Tenn. Code Ann. § 47-18-104(b).

26. Defendants' unfair, misleading and deceptive business practices which violate at a minimum, Tenn. Code Ann. § 47-18-104(a), (b)(5), (b)(12) and (b)(27) include, but have not been limited to:

- (a) Advertising that Defendants can resolve consumers' debts to the IRS for "pennies on the dollar" when that is not the case;
- (b) Advertising that Defendants have more than 450 offices nationwide when the offices are nothing but sales offices that kept no regular business hours and are instead open only for pre-set appointments;
- (c) Leading consumers to think that the representative at the "local" office would be the one to handle the consumers' files when that is not the case, and the consumers cannot meet personally with the agent handling their files without traveling to Charleston, South Carolina;
- (d) Failing to perform work on the consumers' files as promised in the contract and failing to keep the consumers updated on the progress of their files;
- (e) Continually asking consumers to provide duplicates of information already provided to defendants for preparation of the OIC;
- (f) Failing to return calls to consumers who want to speak with the case managers about the progress of their files;
- (g) Failing to follow through on consumers' cases and filing for the OIC in a timely manner, if at all; and
- (h) Sending deceptive mailings to Tennessee consumers that they have judgments filed against them, when that was not the case.

27. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and (a)(4), the Attorney General is authorized to seek and obtain permanent injunctive relief to restrain Defendants' violations of the TCPA.

28. Pursuant to Tenn. Code Ann. § 47-18-108(b)(1), the Attorney General is authorized to seek to have all contracts held void and unenforceable and the restoration of all

moneys or ascertainable losses of a consumer obtained by defendants as a result of Defendants' violations of the TCPA and the Credit Services Act.

29. Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), the Attorney General is authorized to seek and obtain civil penalties for each and every violation of the TCPA.

30. Pursuant to Tenn. Code Ann. §§ 47-18-108(a)(5) and (b)(3), the Attorney General is authorized to seek and obtain reasonable attorneys' fees and costs for the prosecution of this action.

COUNT II: TENNESSEE CREDIT SERVICES BUSINESSES ACT VIOLATIONS

31. Plaintiff hereby incorporates by reference and re-alleges each and every allegation contained in paragraphs 1 through 21.

32. By engaging in the aforesaid conduct, Defendants have violated the Credit Services Act by committing acts and practices that are unfair, misleading, or deceptive and in violation of Tenn. Code Ann. § 47-18-1001 *et seq.*

33. Pursuant to Tenn. Code Ann. § 47-18-1010, a violation of the Credit Services Act is a violation of the TCPA and any violation of the Credit Services Act shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided under the TCPA.

34. Pursuant to Tenn. Code Ann. § 47-18-1007, any breach by a credit services business of a contract under the Credit Services Act or any obligation arising under the Credit Services Act constitutes a violation of the act. Further any contract for services that does not comply with the Tennessee Credit Services Businesses Act shall be void and unenforceable.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, pursuant to the TCPA, the Attorney General's general statutory authority, the Attorney General's authority at common law and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 47-18-116 and no court costs or litigation fees or costs of any sort be taxed against the State pursuant to Tenn. Code Ann. § 47-18-116;

2. That process issue and be served upon Defendants requiring each Defendant to appear and answer this Complaint;

3. That this Court adjudge and decree that the Defendants have each engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;

4. That this Court adjudge and decree that the Defendants have each engaged in the aforementioned acts or practices which violate the Tennessee Credit Services Business Act;

5. That this Court temporarily and permanently enjoin Defendants from engaging in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977 and the Tennessee Credit Services Businesses Act and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4);

6. That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses including statutory interest as that term is defined in Tenn. Code Ann. § 47-18-2102(1), including statutory interest suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977 and/or the

Tennessee Credit Services Businesses Act, and require that Defendants be taxed with the cost of distributing and administering the same, pursuant to Tenn. Code Ann. § 47-18-108(b)(1);

7. That this Court declare all consumer contracts void and unenforceable pursuant to the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1007 and TCPA.

8. That this Court make such orders or render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendants realized by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977 and/or the Tennessee Credit Services Businesses Act;

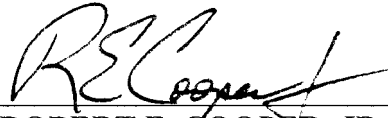
9. That this Court enter judgment against Defendants and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, expert and other witness fees, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4);

10. That this Court adjudge and decree that the Defendants each separately pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation of the Tennessee Consumer Protection Act and the Tennessee Credit Services Businesses Act to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

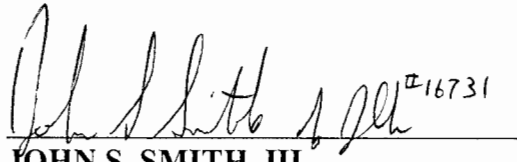
11. That all costs in this case be taxed against Defendants pursuant to Tenn. Code Ann. § 47-18-116; and

12. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "RE Cooper", written over a horizontal line.

ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 010934



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EXHIBIT A

The *TENNESSEAN*
May 1, 2007

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